IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.712 OF 1994

Veena Rishi ....Petitioner.
V/s.
Union of India & Others ....
Respondents

Mr.V.Y. Sanglikar for the petitioner.
Mr.Y.S. Bhate for the respondents.

CORAM : SWATANTERKUMAR, C.J.
&
J.P. DEVADHAR, J.

DATED : 10TH DECEMBER 2007.

P.C. :

The petitioner carries on business in the name and style `Ambika Enterprises (India)' ,as a sole proprietary concern. The petitioner was distributing whitening agent for clothes and was a sole distributer of `Skylark' ultramarine blue, a whitening agent. Respondent No.1 is the Canteen Stores, Department of the Government of India, which supplies items of daily consumption to the Armed Forces all over India through its various depots and used to place orders with the petitioner for supply of the aforesaid whitening agent.

2. According to the petitioners, supplies of the goods in question were made under various invoices for which she had

raised bills during the period from 13-05-1993 to 13-07-1993. There is no dispute in the reply-affidavit filed on behalf of the respondents that the goods in question were received by the respondents.

From the record placed before us, it is clear that the goods under different bill numbers were received by the respondents and payments were made to the petitioner to the extent of 90% of the bill amount, however, 10% of the amount was retained by the respondents, which has not been paid till date. It is further clear from the reply- affidavit filed by the respondents that the goods were received but they were found to be slow selling goods and it is averred that the petitioner was asked to take the goods back. However, there is no document filed by the respondents to that effect along with the reply-affidavit.

3. On this premise, petitioner claims refund of the retained money amounting to Rs.4,63,040/- with interest at the rate of 18% p.a. The respondents opposed grant of this relief on the ground that the present writ petition itself is not maintainable and the petitioner should have filed a suit for recovery of the said amount. It is further contended that the goods were directed to be taken back but the petitioner failed to take back the same and, therefore, the respondents cannot be saddled with any liability. Both these contentions are without any merit. Firstly, the Government can hardly take a stand, that too after receiving the goods, that the petitioner should file a suit for recovery of the amount for the said goods. Secondly, this writ petition was filed in the year 1994 and

for the reasons best known to the State, no reply was filed till the year 2007. When the matter came up for hearing and the respondents woke up from their slumbers and then filed reply, after lapse of 13 years. The respondents have not explained the inordinate delay in taking this objection and it will be neither fair nor just that the writ petition should be dismissed by this Court after such inordinate delay on the ground of maintainability and direct the petitioner to file a suit which might have become barred by limitation as of today.

4. Furthermore, it is a case where the receipt of the goods is admitted. Not only the receipt but even utilization of the goods partially is admitted. No correspondence has been brought on record before us to show that the petitioner was ever called upon to take back the goods, which the respondents in their reply claim to have intended to return. Vague averment is of no consequence, particularly keeping in view the time. Even as of today the respondents neither possess the goods nor have any document to show that the goods were returned. The learned counsel for the petitioner fairly conceded that the petitioner is not pressing the relief for grant of interest and will be satisfied, if the principle amount is paid to the petitioner.

5. In view of the above, we partially allow the writ petition and direct the respondents to pay a sum of Rs.4,63,040/- to the petitioner without any interest. Rule is made absolute in terms of this order, with no order as to costs.

CHIEF JUSTICE

J.P. DEVADHAR, J.